

JOB QUIAL, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 63564. November 28, 1983

Ponente: PLANA, J.

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PLANA, J.:

The Court has resolved to grant partial due course to this petition as regards petitioner's claim to the mitigating circumstance of lack of intention to commit so grave a wrong.

Job Quial, while intoxicated, hit a certain Edmundo Sebido with a single fist blow on the face, causing the latter to fall with his head hitting the asphalted road, resulting in head injuries which eventually cause his death. Indicted, Quial was convicted of homicide by the Court of First Instance of Palawan, from which an appeal was taken to the Intermediate Appellate Court. The latter court affirmed the appealed decision with modifications, prompting the appellant to file the instant petition for review praying for a reduced penalty in view of the alleged presence of two additional mitigating circumstances: lack of intention to commit so grave a wrong and voluntary surrender.

Lack of intention to commit so grave a wrong must be appreciated in favor of the petitioner. Barring exceptional circumstances indicating otherwise, such as clear physical capability to inflict a fatal blow, an intention to kill cannot be deduced from a single fist blow, especially when the assailant, as in the case at bar, was intoxicated when the attack took place.

On the other hand, the petitioner is not entitled to the mitigating circumstance of voluntary surrender. While he did not hide from the authorities after the boxing incident, he did not voluntarily surrender either. It was only when he was served the warrant for his arrest on July 17, 1975 that he gave himself up to the police.

Voluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his search and capture would require.

There being two mitigating circumstances in favor of the petitioner, intoxication as found by the Intermediate Appellate Court and lack of intention to commit so grave a wrong, and no aggravating circumstance, he is entitled to the penalty one degree lower than that provided by law for homicide.

WHEREFORE, the penalty imposed on the petitioner is hereby reduced to two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with the accessories provided for by law. The appealed decision is affirmed in all other respects. No costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Relova, and Gutierrez, Jr., JJ., concur.

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